Supreme Court, U.S.
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No. 02-1040

In The
Supreme Court of the United States

COUNTY OF RIVERSIDE,

Petitioner,

v.

TRACY L. WATSON,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

Petitioner County of Riverside seeks review of an order awarding attorney fees in favor of Respondent Tracy L. Watson based on his status as a prevailing party in an action for injunctive relief. Respondent prevailed in obtaining a preliminary injunction excluding a compelled statement from evidence at an arbitration of his appeal from termination of employment as a Deputy Sheriff. The County obeyed the injunction and refrained from offering the compelled statement into evidence. The County's obedience of the injunction accomplished the central goal of the Respondent's filing of the federal court action, and simultaneously mooted any further proceedings to make the injunction permanent.

Having prevailed on the core remedy sought by the action, Respondent filed a motion for recovery of attorney fees as a prevailing party under 42 U.S.C. § 1988. The motion was granted, and the award was affirmed by the Ninth Circuit. *Watson v. County of Riverside*, 300 F.3d 1092 (9th Cir. 2002). By this petition, the County now seeks to reverse the award.

The petition should not be granted, because the award of attorney fees in this case constitutes no more than a specific application of the United States Supreme Court's recent holdings in *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, 421 U.S. 598, 121 S.Ct. 1835, 149 L.Ed. 2d 855 (2001). Contrary to the County's position, the award does not conflict with United States Supreme Court precedent, nor does the Ninth Circuit's affirmance of the award meaningfully conflict with decisions in other circuits. No

significant judicial or public purpose would be served by a grant of certiorari in this case.

DISCUSSION

1. The award is not based on the discredited "catalyst" theory because the County's obedience of the injunction was not voluntary.

The County's Petition for Certiorari in this case rests on a miscategorization of the Ninth Circuit's opinion in the case as a resurrection of the "catalyst" theory that was condemned by this Court in *Buckhannon*. To create a semblance of a "catalyst" theory case, the County portrays its compliance with the preliminary injunction as voluntary. Petition at 12-13. But the district court was correct in this instance, that "the injunction altered the legal relationship between the parties because it precluded the defendants from using the arrest report, which they otherwise would have been able to use, in the hearing." *Watson*, 300 F.3d at 1094-95, quoting from the district court decision.

The County's portrayal of its obedience as voluntary is absolutely indispensable to its characterization of this case as a "catalyst theory" case. But because the County's obedience of the injunction was not voluntary, this is not a catalyst theory case.

Neither *Buckhannon* nor the catalyst cases in general rested on a losing party's mere obedience of the precise terms of the judicial decree on which the attorney fee award was based. And what *Buckhannon* requires, to take an attorney fee motion out of the condemned "catalyst" category, is not specifically a resolution of the merits, but a

"judicial imprimatur" as a guarantee that the losing party acted under compulsion rather than volition. *Buckhannon*, 421 U.S. at 605. The Ninth Circuit in this case properly elucidated and followed *Buckhannon* on this point. *Watson*, 300 F.3d at 1096.

The County's petition, in seeking to create a semblance of conflict among circuits, contends that "the Ninth Circuit held in this case that merely issuing a preliminary injunction, regardless of the actual merits, is sufficient to confer prevailing party status." Petition at 14-15. That articulation of the Ninth Circuit's holding amounts to a "straw person" set up to be easily knocked down. A more accurate rendition of the Ninth Circuit's holding here is that a plaintiff may achieve prevailing party status by obtaining a preliminary injunction that is obeyed by the defendant rather than appealed, and that accomplishes "one of the main purposes" of the lawsuit, even if the plaintiff fails to prevail on other claims in the case. *Watson*, 300 F.3d at 1096.

2. The injunction was based on the merits because it granted the relief sought by the action.

The County argues strenuously that the Ninth Circuit's decision was not based on the merits. That argument misses the point that while the district court, in granting the injunction, placed greater reliance on the balance of hardships than on the likelihood of success, the granting of the injunction gave the plaintiff the precise relief he sought by bringing the federal action. The district court essentially agreed with the plaintiff's assertion that the County's act of depriving Watson of counsel before writing the report warranted the suppression of the report. The

plaintiff obtained a ruling going directly to the central merits of his district court complaint, received suppression of the evidence, the full benefit for which the action was brought, and that benefit was not taken away by any subsequent ruling in the case.

But in general, the County's emphasis on whether the ruling is strictly declared to be on the merits is misplaced. The *Buckhannon* opinion recognizes that "In addition to judgment on the merits, we have held that settlement agreements enforced through a consent decree may serve as the basis for an award of attorney's fees." *Id.* at 604. A footnote in *Buckhannon* disapproves dicta envisioning awards based on private settlements because they "do not entail the judicial approval and oversight involved in consent decrees." *Id.* at 604 n. 7. By way of contrast, an injunction as in the present case does entail judicial oversight.

3. For purposes of prevailing party analysis, the injunction constituted the requisite alteration of the legal relationships between the parties.

This Court's holding in *Buckhannon* appears to focus not simply on the extent to which the order ostensibly relies on the merits, but equally upon whether there is a judicially sanctioned alteration of legal relationships. The opinion states that "Our precedents thus counsel against holding that the term 'prevailing party' authorizes an award of attorney's fees without a corresponding alteration in the legal relationship of the parties." *Id.* at 605.

The requisite alteration in legal relationships that is absent in the catalyst cases is explained in *Buckhannon* as a "judicially sanctioned change in the legal relationship of

the parties." *Id.* at 605. Here, the granting of the injunction was a judicially sanctioned change in the legal relationship of the parties, which entitled the plaintiff to go back to the district court, if necessary, to enforce the suppression of the compelled report, something the plaintiff could not do before the injunction was granted.

The "catalyst" theory rose and fell in cases where a party either capitulated entirely without judicial compulsion, or alternatively, read the handwriting on the wall from a judicial ruling to capitulate to a disposition beyond what the court had ordered up to that time. Here, the County's supposedly voluntary compliance amounted to no more than obeying the specific terms of a court order. The County was enjoined from introducing the compelled report at the arbitration, and it obeyed the injunction by refraining from introducing the compelled report at the arbitration.

To place this case within the "catalyst" doctrine as an instance of voluntary capitulation, the County must argue that it was *not* compelled to comply with the injunction, it had other options. The petition makes that argument at page 13, by stating that the County could have waited until a decision on appeal or a district court ruling on a permanent injunction, but did not exercise those options.

If the fact that the County had appellate options that it did not exercise were deemed to make its obedience voluntary and thereby transform this case into a "catalyst" case, the plaintiff in a situation such as this could never recover attorney fees no matter how much reliance the trial court had placed on the merits in granting the injunction. The plaintiff here, in obtaining the preliminary injunction, had done all he ever could do to secure the

right to the suppression of the report at the arbitration hearing, and that right was secured by the injunction. Once that hearing was over, any effort by the plaintiff to proceed toward permanent injunction would be defeated by mootness.

No unfairness or anomaly would result from a rule requiring the defendant subject to a preliminary injunction to exercise its appeals successfully if it wants to avoid facing attorney fee liability. A full exercise of appellate options would result in a more orderly disposition of the case, because an erroneous injunction would be reversed before it alters the underlying legal landscape, while a correct injunction would be obeyed with more confidence in its correctness after appellate affirmance. And the courts are generally receptive to an expedited appeal from a preliminary grant of equitable relief.

The "catalyst" theory required the moving party to show causation by demonstrating essentially that the particular judicial ruling was a substantial factor in causing the losing party to capitulate to some additional relief the victorious party was seeking. See, e.g., *Foreman v. Dallas County*, 193 F.3d 314, 320 (5th Cir. 1999). In making this showing of causation, the victorious party must usually ask the court to infer the reason for the capitulation. But where a losing party has done no more than obey the precise ruling of the court that it had sought to resist, there is no need to infer or guess why the party complied, it can safely be presumed the party complied because a court with jurisdiction over the matter so ordered. The Ninth Circuit permissibly made that presumption here. *Watson*, 300 F.3d at 1096.

4. The holding does not meaningfully conflict with holdings in other circuits.

The cases from other circuits cited by the County do not establish a conflict with the Ninth Circuit ruling here that warrants a grant of certiorari. Given the clarification of prevailing party status rendered in *Buckhannon*, only an apparent conflict among circuits involving cases arising after *Buckhannon* would seem to raise an issue warranting the present attention of the court. Thus far, only the First, Third and Fourth Circuits have rendered such recent decisions.

In *Race v. Toledo-Davila*, 291 F.3d 857 (1st Cir. 2002), denial of attorney fees under the Americans with Disabilities Act was affirmed. The plaintiff who was precluded from registering his car until resolving a dispute over a citation for parking in a handicapped space obtained a preliminary injunction to enjoin any arrest for lack of registration until the dispute was resolved. The plaintiff voluntarily dismissed the complaint after the dispute was resolved in his favor.

The court recognized the criterion from *Farrar v. Hobby*, 506 U.S. 103, 111 (1992), that a plaintiff prevails when actual relief on the merits of his claim materially alters the legal relationship between the parties. . . . " 291 F.3d at 858. The court observed, "This case never progressed to the merits of appellant's ADA claim, even in a prefatory way. . . . Although issuance of a preliminary injunction typically involves a review of the merits to determine whether the requesting party is likely to succeed on his claim, the district court confirmed that it intended merely 'to safeguard Plaintiff's rights under the

ADA while he was exhausting his administrative remedies under state law.'" *Id.* (citation omitted).

In the present case, the district court expressed a view on the merits, and the preliminary relief obtained went to the core of the merits of the proceeding. *Race* does not conflict with the present case. *Race* was brought to test the defendants' conduct under the ADA, and the preliminary injunction did not begin to address that issue. The present case was brought solely to test the constitutionality of the evidentiary use of the compelled report, and the preliminary injunction rendered effective relief directly on that issue.

In *J.O. v. Orange Township Board of Education*, 287 F.3d 267 (2002), the Third Circuit affirmed denial of attorney fees in an action under the Individuals with Disabilities Education Act where a temporarily suspended student had achieved reinstatement to school from suspension before the action was mooted by the parents' relocation. *Id.* at 269-70. Recovery of attorney fees was denied on the basis that the reinstatement order constituted interim relief. *Id.* at 271-72.

The denial was affirmed on the basis that the reinstatement was more akin to preservation of the status quo than to the requisite change in the legal relationships between the parties, since the student had an ongoing current educational placement at the particular school despite the temporary suspension, and the reinstatement merely carried out the statute's goal of preventing schools from unilaterally excluding students with disabilities. *Id.* at 273-74. By contrast, the injunction here effected a definite alteration of the legal relationships between the parties, giving the plaintiff a remedy he did not have

before it was granted. There is no conflict between the Third Circuit in *J.O.* and the present case.

The Fourth Circuit in *Smyth v. Rivero,* 282 F.2d 268 (2002), found the granting of a preliminary injunction "closely analogous . . . to the examples of judicial relief deemed insufficient in *Buckhannon.*" *Id.* at 276. Reversing an attorney fee award in favor of welfare recipients who obtained a preliminary injunction that became moot when the defendants abandoned the policy that would have cut off their benefits, *id.* at 270-73, the court held that "the preliminary injunction entered by the district court does not satisfy the prevailing party standard of section 1988(b)." *Id.* at 277. The opinion appears to reject categorically the proposition that "a preliminary injunction is in some cases a proper basis for prevailing party status." *Id.* at 277 n. 9. The opinion devotes considerably greater attention to rejecting the plaintiff's argument seeking essentially to resurrect a vestige of the catalyst theory and assert prevailing party status on the basis of the partial settlement. *Id.* at 278-285.

The preliminary injunction in *Smyth* enjoined a benefit cutoff, based largely on the "severe hardship" from the loss of welfare benefits. *Id.* at 277. Unless the plaintiffs had followed upon the preliminary injunction by proceeding to either a permanent injunction or a settlement, the temporary restoration of the welfare benefits in obedience of the preliminary injunction would not have given the plaintiffs the relief they sought by filing the action.

In categorically precluding the use of a preliminary injunction as a basis for prevailing party status, the Fourth Circuit had no occasion to consider the significantly more

dispositive effect of the preliminary injunction granted in the present case, where the defendant's obedience of an injunction on a single discrete occasion was sufficient to give the plaintiff the central object of the entire action, and mooted any prospective proceedings for permanent injunction and judgment. The fact that the full benefit of the injunctive relief in the present case could be, and was, realized by the obedience on a single occasion distinguishes this preliminary injunction and furnishes a sufficient, if not overpowering, basis to reconcile this case with *Smyth* as a different particular application of this court's *Buckhannon* precedent.

The petition for certiorari in this case does not articulate a discernable purpose to resolve significant legal issues beyond the private interests of the petitioner. The catalyst theory is dead and is not in the slightest resurrected by the Ninth Circuit's holding in the present case.

The petition does not suggest the legal rule that would emerge from a grant of certiorari in the present case. If the court grants certiorari in the present case, it could perhaps consider adopting the near-categorical rule in *Smyth*, that a preliminary injunction can never furnish a basis for prevailing party status. A different rule falling on a continuum somewhere between *Buckhannon* and *Smyth* is not advocated in the petition. Such a rule, if articulable, would not necessarily be manageable or predictable. The petition does not furnish a compelling reason for this Court to revisit the rules of attorney fee recovery this soon after the clarification rendered in *Buckhannon*, and the petition should consequently be denied.

CONCLUSION

The Ninth Circuit properly applied this Court's *Buckhannon* precedent to the facts before it. The County's further argument, that the attorney fee award was excessively broad, basically inquires into judicial discretion, and does not raise an issue of constitutional stature. Respondent respectfully submits that the County's petition does not furnish sufficient reason to grant certiorari in this case.

Respectfully submitted,

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